

Private Letter Ruling: Compensation of a British citizen employed by a British consulate exempted from state income taxation under the 1951 Consular Officers Convention between the United States and Great Britain is not subject to Illinois Income tax.

November 8, 2005

Dear:

This is in response to your letter dated August 5, 2005, in which you request a Private Letter Ruling.

In your letter you state as follows:

On behalf of her Majesty's Government of Great Britain and Northern Ireland (the "U.K. Government"), we respectfully request a ruling from the Illinois Department of Revenue that the salaries and wages paid by the U.K. Government to certain of its consular officers and consular employees are exempt from Illinois state income tax.

This request is made pursuant to, and in compliance with, procedures set forth in Illinois Department of Revenue, Regulation 2 Ill. Admin. Code 1200.110, pertaining to requests for a Private Letter Ruling. A power-of-attorney form authorizing the undersigned to represent the U.K. Government in this matter is attached under Tab A.

FACTS

The British Embassy and its consular posts throughout the United States work to develop and sustain the important and long-standing relationship between the United Kingdom ("U.K.") and the United States. This mission involves dealing with a wide range of political, commercial, security, and economic questions of mutual interests to the U.K. and the United States.

British Consulates help to promote trade and investment between the U.K. and the United States. They also keep the British Ambassador to the United States in touch with political, economic, and other developments in their consular districts. The Consulates are also responsible for the consular protection of British nationals who temporarily reside in, or visit their consular district.

The U.K. Government maintains a consular post in the State of Illinois. It employs approximately 36 people who reside in Illinois. Some of the U.K. Government employees are United States citizens; some are dual citizens of both the United States and some other country other than the U.K.; some are dual citizens of both the United States and the U.K.; and some are non-U.S. citizens who are present in the United States pursuant to visas or as permanent residents with green cards.

LEGAL AUTHORITY

The 1951 Consular Officers Convention between the United States and

the U.K. (the "Convention," a copy of which is attached under Tab B) controls, among other things, the taxation of the wages paid to consular officers and consular employees working in their country's consulates located in the other country. Article 13 of the Convention expressly covers state income taxes as well as federal income taxes:

(2) No tax or other similar charge of any kind shall be imposed or collected in the territory by the receiving state [i.e., the United States in this case], *or by any state, province, municipality, or other local subdivision thereof*, in respect of the official emoluments, salaries, wages or allowances received as compensation for his consular services by a consular officer, unless he is a national^a of the receiving state and is not also a national of the sending state.

(3) The provisions of paragraph (2) of this Article also apply to the official emoluments, salaries, wages or allowances received by a consular employee as compensation for his services at a consulate, unless such consular employee is a national of the receiving state and is not also a national of the sending state.

3 U.S.T. 3426 (June 6, 1951) (emphasis added).

LEGAL ANALYSIS

Pursuant to the Convention, every U.K. Consular officer and consular employee working in the United States is exempt from federal, state, and local income taxes on his or her compensation from the consular employment, unless the employee is a citizen of the United States and does not also hold U.K. citizenship. Accordingly, the officers and employees working in the U.K. consulates in Illinois should not be subject to Illinois income tax on their wages from the consular employment, unless they are citizens of the United States and not also U.K. citizens.

RULINGS REQUESTED

Based on the foregoing explication of facts and legal analysis, we request the following rulings for all tax years:

1. The U.K. Government's consular officers and consular employees who are solely U.K. citizens are not subject to Illinois income tax on the wages received for their consular employment.
2. The U.K. Government's consular officers and consular employees who are dual citizens of both the United States and the U.K. are not subject to the Illinois income tax on the wages received for their consular employment.
3. The U.K. Government's consular officers and consular employees who are not citizens of the United States are not subject to the Illinois income tax on the wages received for their consular

employment.

The U.K. Government is not seeking a ruling with respect to the jurisdiction of Illinois to impose its income tax on the wages earned by any other class or type of employees.

PROCEDURAL STATEMENTS

To the best of my knowledge, the issues involved in this ruling request are not the subject of any ongoing audit, protest, or appeal, or litigation involving the U.K. Government or its employees.

The U.K. Government would like to have a conference on the issues involved in this ruling request only in the event of a proposal to rule adversely. In such a case, please contact me to discuss and arrange such a conference.

DEPARTMENT RESPONSE:

As you probably know, the starting point for Illinois income tax purposes is an individual's federal adjusted gross income (FAGI). Illinois Income Tax Act (IITA) Section 203(a)(1); 35 ILCS 5/203(a)(1). FAGI is then modified by certain additions and subtractions peculiar to Illinois in arriving at Illinois base income subject to tax. It follows that an item not included in an individual's FAGI will not be taxable in Illinois either unless it is the subject of an Illinois addition modification.

According to Articles 2 and 3 of the 1951 Consular Officers Convention between the United States and the U.K., no consular officer or consular employee is subject to either federal or state income tax on his or her compensation received in exchange for his or her consular services, unless he or she "*is a national of the receiving state (herein, the U.S.) and is not also a national of the sending state (herein, the U.K.).*" To the extent such compensation for consular services is excluded from FAGI, there is no addition modification with respect to such items for Illinois purposes. Similarly, to the extent that such compensation income is included in FAGI, an individual exempt from state and local income taxation under the aforementioned 1951 Consular Officers Convention, would avoid Illinois income tax by virtue of the subtraction modification set forth at IITA 203(a)(2)(N). That section allows a deduction for:

(N) An amount equal to all amounts which are exempt from taxation by this State either by reason of its statutes or Constitution or by reason of the Constitution, treaties or statutes of the United States...

Under paragraphs (2) and (3) of Article 13 of the 1951 Consular Officers Convention, only a consular officer or employee who is a "national" of the receiving state (i.e., the U.S.) and who is not also a "national" of the sending state (i.e., the U.K.) is subject to income taxation by any state of the receiving state (i.e., the U.S.). According to Article 2, Paragraph (4) of the Convention, "national" means "citizen." Therefore, by definition, consular officers and employees in the three categories mentioned in your correspondence would be exempt from income taxation by states of the U.S., including Illinois, on their compensation income received in exchange for consular services under this Convention. We note that the U.S./U.K. tax treaties entered into after the 1951 Consular Officers

Convention, the most recent of which was signed July 24, 2001, contain articles stating that nothing therein "shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements." See, e.g., 2001 U.S.-U.K. Income Tax Treaty, signed July 24, 2001, Article 28.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax